IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 917 of 2002
With
CRIMINAL APPEAL No. 889 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAYESHKUMAR KANTILAL PANCHAL - Appellant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :

Criminal Appeal No. 917 of 2002
MR HASMUKH PATEL FOR MS LUCINTA S RAJ for Appellant
MR KT DAVE ADDL PUBLIC PROSECUTOR for Respondent

Criminal Appeal No.889 of 2002

MR MANISH PATEL for Appellant

MR KT DAVE ADDL PUBLIC PROSECUTOR for Respondent

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 23/02/2007

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.M.KAPADIA)

1. These two Criminal Appeals under Section 374 of the Code of Criminal Procedure ('the Code' for short) are directed against the judgment and order dated 27.9.2002 rendered in Sessions Case No. 296 of 1999 by the learned Additional Sessions Judge, Court No.10, City Sessions Court, Ahmedabad, by which the appellant of Criminal Appeal No. 917 of 2002 (A-1) is convicted for commission of the offences under Sections 489A, 489B, 489C and 489D of the Indian Penal Code ('IPC' for short) and sentenced to suffer RI for ten years and fine of Rs.30,000/- and in default of payment of fine, RI for further period of two years for commission of the offence under Section 489A IPC, RI for seven years and fine of

Rs.5,000/- and in default of payment of fine, SI for further period of one year for commission of the offence under Section489B IPC, RI for five years and fine of Rs.5,000/- and in default of payment of fine, SI for further period of one year for commission of the offence under Section 489C IPC and RI for ten years and fine of Rs.10,000/- and in default of payment of fine, RI for further period of two years for commission of offence under section 489D IPC whereas appellant of Criminal Appeal No.889 of 2002 (A-2) is convicted for commission of the offences under Sections 489B and 489C IPC and sentenced to suffer RI for five years and fine of Rs.5,000/- and in default of payment of fine, SI for further period of one year for commission of the offence under Section 489B IPC and RI for four years and fine of Rs.3,000/- and in default of payment of fine, S.I. for further period of six months for commission of the offence under Section 489C IPC. It is also ordered that all the sentences imposed on both the accused shall run concurrently.

2. The prosecution case, as disclosed from the FIR and unfolded during trial, is as under:

2.1. P.W.5, Tarunbhai Amrutlal Barot, PI, DCB, Crime Branch, Gaekwad Haveli, Ahmedabad, when he was on duty on 18.6.1999, at 18.45 hours, he received a secret information through telephone that one person at Odhav, Ambica Nagar at Aavishkar Complex is selling counterfeit currency notes by posing them as genuine and sells them at half the price. He is wearing brown coloured pant and red coloured white checked T-shirt of half sleeve and is roaming on his scooter bearing registration No. GJ-1-BH-6598 in that area. Thereafter, P.W.5, TA Barot called his staff members and after informing his superior officer, he went to Aavishkar Complex, Ambica Nagar, Odhav, with PSI R.B. Joshi and P.P. Bhatt, Police Constable Mahendrasinh and Jamadar Nanjibhai, etc., at 19.45 hours. They all scattered and sat in watch and P.W.5 had also

called two panchas by sending one of his persons and continued to sit there for nearly 2-3 hours, when, at around 23.00 hours, a person described in the information was found to be coming. He was stopped and was inquired of his name in presence of the panchas and he replied that, he is Kaushik Shambhubhai Patel (A-2). He was taken nearer to Khodiar General Store and was searched in person. From his right pocket, nine currency notes of denomination of Rs.100 were found. There was neither water mark nor Ashok Stambh. Prima facie the notes looked forged and counterfeited. He was a resident of Premchandnagar Society and had come to Ambica Nagar, Odhav to meet one Rameshbhai. He was taken in the government vehicle with the panchas and while they were going, a man was found on the motorbike near Navrang High School when A-2 stated that he was the person named Jayesh. He was halted and on inquiring with him, he gave his name as Jayesh Panchal(A-1), resident of Premchand Nagar, satellite Road, who was wearing white coloured shirt and pant. When he

was searched, a purse was found from the pocket of his pant and a driving licence as well. He had a white shoulder bag which was searched and 44 currency notes of Rs.100 denomination were found which also looked prima facie counterfeit. His scooter number was GJ-1-BC-4631. They both were detained and were brought to the police station.

2.1. A complaint was lodged in respect of the aforesaid incident by P.W.5, T.A. Barot, at DCB Police Station, Gaekwad Haveli, Ahmedabad where it was registered vide CR No.I-18/99 against the accused for commission of the offences under Sections 489A, 489B, 489C and 489D IPC. Thereafter P.W.5 started investigation and during investigation and interrogation, it was found that two other persons were also involved in the scam of fake currency notes, i.e., original accused Nos.3 and 4, who have been acquitted by the trial court and are not before this Court.

2.2. During the course of investigation and

interrogation, A-1 confessed that he has printed the fake currency notes and he has xerox machine for printing the fake currency notes on which duplicate currency notes can be printed. P.W.5, therefore, immediately called other two panchas for drawing discovery panchnama under Section 27 of the Indian Evidence Act and before the two panchas also A-1 confessed and also agreed to show the place where the xerox machine and other instruments including papers, ink, etc., are kept by him. Accordingly, first part of the panchnama was drawn and beneath it, the signature of the panchas were obtained. Thereafter P.W.5 along with other police personnels and both panchas and A-1 went near Manav Mandir near a lane leading to Memnagar, in police jeep, and A-1 asked to park the vehicle and from there they went to flat No.1 of Anand Dhara and then they were asked to stop and A-1 told that the xerox machine is lying in the said house. Therefore he knocked at the door and on knocking at the door, one Sanjaybhai came outside the house. Sanjaybhai and A-1 were

knowing each other. Thereafter one room which was locked near the flat was opened by A-1. In the said house they found one closed carton by affixing cello-tape which was opened by A-1 in presence of police personnels and pachas. On opening it one, a bundle containing 906 notes of Rs.100 denomination i.e., Rs.90,600 and plain papers were also found and on asking him he replied that with the help of said paper he is preparing fake currency notes of Rs.100 denomination. Thereafter from another carton he took out imported xerox machine. Thereafter A -1 also demonstrated how the fake currency notes are prepared and in presence of all of them he prepared one sample of fake currency note of Rs.100 denomination which was destroyed by the police officers in presence of panchas and thus the second part of the panchnama was completed and beneath the same also signature of the panchas was obtained. As per the prosecution case, it is a discovery panchnama.

2.3. During the course of investigation, the muddamal currency notes were sent to P.W.6, GS Parmar, Treasurer of Reserve Bank of India who verified the said fake currency notes and certified that they are fake currency notes and he has given a written opinion which is on record at Ex.35. On receipt of the opinion from P.W.6, GS Parmar to the effect that the currency notes recovered from A-1 are counterfeit and since investigation was completed and as incriminating evidence was found against the accused persons, all of them were charge-sheeted before the learned Metropolitan Magistrate, Ahmedabad.

2.4. As all the offences with which the accused persons were charged are exclusively triable by the Court of Sessions, the learned Metropolitan Magistrate, Ahmedabad committed the case to the City Sessions Court, Ahmedabad.

2.5. On committal, the learned Additional Sessions Judge, City Sessions Court (Court

No.10), Ahmedabad to whom the case was made over for trial, framed charge against the accused persons for commission of the offences under Sections 489A, 489B, 489C and 489D IPC and the charge was read over and explained to them. As the accused persons pleaded not guilty to the charge and claimed to be tried, they were put to trial by the learned Additional Sessions Judge, City Sessions Court (Court No.10), Ahmedabad and tried in Sessions Case No. 296 of 1999.

2.6. In order to bring home the charge levelled against the accused, the prosecution has examined in all six witnesses and relied upon their oral testimonies, the details of which are as under:

P.W. No.	Name	Ex.No.	Page No.
1	Dipakbhai Bhaskarbhai, Panch	21	53
2	Rupeshbhai S Kankuvala, Panch	25	61
3	Mohmadsaiyed Mohinuddin Kazi, Panch	26	65
4	Mohmadyusuf Mahmadhanif Aasatvala, panch	28	71

P.W. No.	Name	Ex.No.	Page No.
5	T.A.Barot, PI, complainant and investigating officer	30	77
6	Ganpatbhai S. Parmar, Treasurer of RBI	37	105

2.7. To prove the charge against the accused, the prosecution has also produced a number of documents and relied upon the contents of the same, such as complaint, discovery panchnama, recovery panchnama, opinion of Treasurer of Reserve Bank of India, etc., the relevance of which for deciding the case will be discussed at the appropriate time hereinafter in this judgment.

2.8. After recording of the evidence of the prosecution witnesses was over, the trial court explained to the accused persons the circumstances appearing against them in the evidence of the prosecution and recorded their further statement under section 313 of the Code. In their further statement, the accused persons denied the case of the prosecution in toto and

reiterated that they are innocent and have been falsely implicated. However, they did not lead any evidence nor did they examine any witness in support of their defence.

2.9. On appreciation, evaluation, analysis and scrutiny of the evidence on record, the trial court held that so far as A-3 and A-4 are concerned, there is virtually no evidence against them and, therefore, the trial court acquitted A-3 and A-4 by giving them benefit of doubt. So far as A-1 is concerned, the trial court observed that there is ample and voluminous evidence to the effect that he was having fake currency note when he was apprehended. It was also held that the discovery panchnama at the instance of A-1 was drawn and as per the discovery panchnama which has been proved, A-1 has shown the place where the xerox machine and other materials for counterfeiting currency notes were kept and on the basis of the information supplied by him, same were found from there. Not only that he has

also demonstrated how the fake currency notes are prepared in presence of panchas as well as members of the raiding party. Therefore, involvement of A-1 is duly proved by the prosecution for commission of offences under sections 489A, 489B, 489C and 489D IPC and therefore held him guilty of the said offences. So far as A-2 is concerned, he was found with 9 fake currency notes of Rs.100 denomination which were fake and counterfeit and therefore A-2 has also committed offences under sections 489B and 489C IPC and accordingly A-1 ad A-2 are convicted and sentenced to which reference is made in the earlier paragraph of this judgment, giving rise to these two appeals at the instance of A-1 and A-2.

2.10. A-1 has filed Criminal Appeal No. 917 of 2002 whereas A-2 has field Criminal Appeal No.889 of 2002.

3. Mr. Manish Patel, learned advocate for A-

2, who filed Criminal Appeal No.889 of 2002, at the outset made a statement at the bar that A-2, Kaushik Shambhubhai Patel has died on 7.4.2005 while he was on bail. In support of the plea, he has produced xerox copy of the death certificate issued by AMC Odhav Ward Ele. No.35 dated 8.4.2005 showing that Kaushik Shambhubhai Patel has died on 7.4.2005 and, therefore, the appeal filed by him has been abated in view of the provisions contained under Section 394 of the Code.

3.1. This court, therefore, asked Mr. KT Dave, learned APP to verify the said fact. Accordingly Mr. KT Dave, learned APP has inquired the details about the said aspect from the Central Jail, Ahmedabad as well as Odhav Police Station. Pursuant to the inquiry, the Deputy Superintendent of Central Jail, Ahmedabad has sent jail remarks-sheet dated 1.12.2006 and PSI of Odhav Police station has also sent a letter dated 8.2.2007.

3.2. As per the jail remarks sheet, A-2 Kaushik Shambhubhai Patel who was on regular bail in pursuance of an order dated 29.10.2006, during pendency of the appeal, whereas as per report of PSI Odhav Police Station, A-2 has died on 7.4.2005. The PSI has also stated that he recorded the statement of Shantaben, widow of Shambhubhai, mother of A-2 as well as statement of Himanshu Yogendraprasad. As per the statement of both of them A-2 has died on 7.4.2005. Along with the said letter the PSI has also sent a death certificate issued by AMC confirming the death of A-2. Therefore, there is a reason to believe that A-2 has died on 7.4.2005.

3.3. As per section 394 (2) of the Code, the appeal filed by A-2 has been abated in view of the fact that his near relatives have not applied for leave to continue the appeal and, therefore, the appeal filed by A-2 being Criminal Appeal No.889 of 2002 has been abated and, therefore,

it is not necessary for us to examine the case of A-2.

4. So far as Criminal Appeal No.917 of 2002 is concerned, Mr. Hasmukh Patel, learned advocate for A-1 has raised the following contentions:

(i) P.W.5, who has received the secret information has arranged for trap, filed complaint and also investigated the case and, therefore, he acted in dual capacity and hence the investigation made by him is vitiated on account of bias and, therefore, the judgment and order convicting A-1 is bad in law.

(ii) Panchas are selectee. According to him, all the panchas selected by P.W.5 are rickshaw drivers and P.W.5 being Police Officer and the pnchas being rickshaw drivers, the possibility cannot be ruled out that just with a view to assist P.W.5 they might have acted and deposed as tutored by P.W.5 and therefore no reliance can be

placed on their oral testimony as well as the panchnama signed by all the panch witnesses.

(iii) The currency notes which were found from A-1 were not sent for chemical analysis to FSL and in absence of report of FSL it cannot be held that the currency notes recovered from A-1 were fake currency notes.

(iv)The entire prosecution case rests on the evidence of P.W.5 and panch witnesses also were selectee of P.W.5, and since there is no evidence of any independent witness, conviction recorded against A-1 is bad in law.

4.1. Therefore, according to him, the impugned judgment and order passed by the rial court deserves to be quashed and set aside by allowing the appeal filed by A-1 being Criminal Appeal No. 917 of 2002 and thereby acquit A-1 by giving him benefit of doubt.

4.2. In the alternative, it is submitted by him that if this Court comes to the conclusion that A-1 has committed the offences as alleged and held to be proved against him, then mercy and leniency may be shown on him by reducing the sentence and the imprisonment undergone by him till now as since he is in jail from the date of pronouncement of the judgment i.e., 27.9.2002 and approximately he has already undergone 4 ½ years imprisonment, the sentence undergone by him so far may be treated as substantive sentence for the offences proved against him. Therefore he urged to pass appropriate order in this regard.

5. In counter submission Mr. K.T. Dave, learned APP, has contended that there is voluminous evidence against A-1 to the effect that he has committed the offences under sections 489A, 489B, 489C and 489D IPC. He was caught with the fake currency notes and he has also shown how he has prepared the fake currency notes by using xerox machine and other material. Xerox

machine and other materials used for preparing counterfeit currency notes were recovered from him in presence of police officers and panchas when, on the basis of his statement, investigating officer along with panchas visited the said place and from there not only xerox machine but other materials like ink, paper, etc. and bundles of fake currency notes were seized and, therefore, discovery panchnama was prepared under section 27 of the Indian Evidence Act and in these circumstances there is no reason to discard that piece of evidence. All the panchas have supported the prosecution case. It is only a coincidence that all the panchas are rickshaw drivers and merely because they are all rickshaw drivers is no reason to discard their evidence unless it is proved that they were the selectee of the investigating officer. Not a single question was asked in the cross-examination of panchas which would impeach their credibility. Therefore there is no reason to discard the evidence of P.W.5, as well as panchas

and P.W.6, GS Parmar, who opined that the currency notes sent to him for examination were fake currency notes. According to him, therefore, the trial court has rightly recorded conviction and sentence against A-1 for commission of the offences under sections 489A, 489B, 489C and 489D IPC which does not warrant interference of this Court in the appeal filed by him.

5.1. So far the alternative submission made by Mr. Hasmukh Patel, learned advocate for A-1 with regard to showing leniency is concerned, he has submitted that the offence committed by the A-1 is a very serious offence. He has also asserted that the offence of counterfeiting currency notes is a crime against the Nation and it will affect the economy of the country adversely and, therefore, no leniency can be shown against A-1. He, therefore, submitted that there is no merit in the appeal filed by A-1 being Criminal Appeal No.917 of 2002 and urged

to dismiss the appeal.

6. This Court has considered the submissions advanced by the learned advocates appearing for the parties and perused the impugned judgment and order. This Court has undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record which is read and re-read by the learned advocates for the parties with reference to broad and reasonable probabilities of the case. In light of the caution sounded by the Supreme Court while dealing with criminal appeals, this court has examined the entire evidence on record for itself independently of the trial Court and considered the arguments advanced on behalf of the accused persons and infirmities pressed, scrupulously with a view to find out as to whether the trial Court has rightly recorded the order of conviction and sentence.

7. In order to prove the culpability of the

A-1, prosecution has examined and relied upon the evidence of P.W.5, TA Barot, Ex.30, page 77 of the paper book. He has inter alia testified that when he was on duty on 18.6.1999, at 18.45 hours, he received a secret information through telephone that one person at Odhav, Ambica Nagar at Aavishkar Complex is selling counterfeit currency notes by posing them as genuine and sells them at half the price. He is wearing brown coloured pant and red coloured white checked T-shirt of half sleeve and is roaming on his scooter bearing registration No. GJ-1-BH-6598 in that area. Thereafter, he called his staff members and after informing his superior officer, he went to Aavishkar Complex, Ambica Nagar with PSI R.B. Joshi and P.P. Bhatt, Police Constable Mahendrasinh and Jamadar Nanjibhai, etc., at 19.45 hours. They all sat in watch scattered when he also called two panchas by sending one of his persons and continued to sit there for nearly 2-3 hours, when at around 23.00 hours, a person described in the information was found to be

coming. He was stopped and was inquired of his name in presence of the panchas and he replied that, he is Kaushik Shambhubhai Patel (A-2). He was taken nearer to Khodiar General Store and was searched in person. From his right pocket, nine currency notes of denomination of Rs.100 were found. There was neither water mark nor Ashok Stambh. Prima facie the notes looked forged and counterfeited. He was a resident of Premchandnagar Society and had come to Ambica Nagar, Odhav to meet one Rameshbhai. He was taken in the government vehicle with the panchas and while they were going, a man was found on the motorbike near Navrang High School when A-2 stated that he was the person named Jayesh. He was halted and on inquiring with him, he gave his name as Jayesh Panchal (A-1), resident of Premchand Nagar, satellite Road, who was wearing white coloured shirt and pant. When he was searched, a purse was found from the pocket of his pant and a driving licence as well. He had a white shoulder bag which was searched and 44

currency notes of Rs.100 denomination were found which also looked prima facie counterfeit. His scooter number was GJ-1-BC-4631. They both were detained and were brought to the police station.

7.1. P.W.5 was cross-examined at length by the learned advocates for the accused persons. He has in his cross-examination agreed to the suggestion that no note has been made in the station diary about the information he received through the telephone. According to him, every information need not be reduced into station diary because some information received through the phone may turn out to be false. He also agreed that for proper administration of police station, notings are required to be made but emphatically disagreed to the suggestion that every movement of the police officer is required to be invariably noted down. Some of the details, if found proper are required to be communicated to the superior officer, but even the success of raid is not necessarily required to be entered

into the station diary since the crime in such event is registered. He had not reported to his senior officer on receiving the information prior to going for the raid. They left the police station after 10-15 minuets on receipt of the information. Panchas were called after they reached to the place. It was not the main road where they were waiting and scattered in a watch but it was an inside road. The preliminary panchnama was drawn after the panchas were called by the staff members. The second part of the panchnama was completed at night only under electricity pole and both the panchas were with him till around 2.00 - 2.30. He gave his complaint after returning to the police station. He informed his superior Shri Subhash Trivedi regarding the success of the raid, but it was not given in writing to him nor has he made any note in the station diary. He continued to investigate into the matter thereafter. He also agreed to the suggestion that after the panchnama Ex.29 was drawn, he had given his complaint Ex.31 and

complaint does not contain the numbers of currency notes. In an answer to the trial court's query, this witness has stated that he had sent a written report to his superior after the success of the raid. He has shown his willingness to produce the weekly diary before the court and after the registration of the crime, the same was sent over to the police station officer who sent him back for further investigation. From his cross-examination, nothing substantial has been brought out which would impeach his credibility.

8. So far as complaint Ex.31 filed by P.W.5 is concerned, from the perusal of the same there is no manner of doubt that PW 5 has deposed as per the complaint and, therefore, the oral testimony of P.W. 5 and complaint Ex.31 corroborates each other and there is no reason to discard the testimony of P.W. 5, T.A. Barot as well as the complaint filed by him at Ex.31.

9. It is further case of the prosecution

that A-1 has shown willingness to show the place where he has kept xerox machine, ink and papers used for preparing fake currency notes and, therefore, discovery panchnama under section 27 of the Indian Evidence Act was drawn. The prosecution, therefore, relied upon the evidence of those panchas.

10. In this connection, the prosecution has examined and relied upon the oral testimony of P.W.1, Dipakbhai Bhaskarbhai, Ex.21, page 53 of the paper book. He has, inter alia, testified that on 12.6.1999 at about 9 O' clock in the morning he was called to DCB Police station while he was passing through Gaekwad Haveli Police station. In his presence A-1 has stated that he was willing to show the place where he kept the instrument for preparing fake currency notes. He has also stated that one another panch, Ashishbhai Narsingbhai Patel was also with him and he has signed the first part of the panchnama. He has stated that P.W.5, other police

personnels and another panch and A-1 went to the said place in government jeep. A-1 took all of them to one house and knocked at the door and one person came from inside the house and thereafter A-1 opened one room with the key where they found xerox machine contained in a box as well as 9 bundles of fake currency notes which were recovered. The blank papers were also recovered. The fake currency notes were of Rs.100 denomination. The matter did not rest there. This witness has also stated that A-1 also demonstrated the preparation of fake currency notes in the xerox machine in their presence and A-1 prepared one fake currency note which was ultimately destroyed. Thereafter all the articles were recovered and seized and accordingly the second part of the panchnama was prepared. The said panchnama is on record at Ex.22.

10.1. A perusal of the panchnama Ex.22, there is no manner of doubt that P.W.1 has deposed as per the contents of the panchnama

Ex.22 and he was also cross-examined at length but nothing substantial has been brought out from his cross-examination which would impeach his credibility.

11. The prosecution has thereafter examined and relied upon the oral testimony of P.W.2, Rupeshbhai S. Kankuvala, Ex.25, page 61 of the paper book. From this witness, A-1 used to purchase the white bond papers without bill. He has deposed as per the statement made by him during the course of investigation. Therefore there is nothing on record which would impeach his credibility.

12. The prosecution has thereafter examined and relied upon the oral testimony of P.W.3, Mohmadsiayed Mohinuddin Kazi, Ex.26, page 65 of the paper book. He has testified that he was called to act as panch and he has also testified that A-1 has taken him and another panch and police personnels to his house where father and

mother of A-1 were also present. In his presence certain articles were recovered which were used for making fake currency notes. The said articles are mentioned in the panchnama Ex.27. He has deposited as per contents of Ex.27. Therefore there is no reason to discard his oral testimony.

13. The prosecution has also examined and relied upon the oral testimony of P.W.6, Ganpatbhai S. Parmar, Treasurer of Reserve Bank of India, Ex.37, page 105 of the paper book. He has testified that at the relevant time he was working as Treasurer in RBI, Ahmedabad. He has testified that P.W.5, TA Barot came with currency notes. He requested him to check the currency notes and opined that those currency notes are fake and he has also given a written opinion which is on record at Ex.35. This witness was also cross-examined at length by the learned advocate for A-1 as well as other accused but he withstood the test of cross-examination and nothing substantial has been brought out which

would impeach his credibility.

14. So far as the contention raised by Mr. Hasmukh Patel, learned advocate for A-1, that P.W.5 has received the secret information, arranged for raid, recovered the muddamal, filed complaint and also investigated the case and, therefore, the investigation carried out by him is vitiated, has no substance.

14.1. In the case of State, represented by Inspector of Police, Vigilance & Anti-Corruption, Tiruchirapalli, T.N. v. V. Jayapaul, (2004) 5 SCC 223, the Supreme court has held that there is nothing in the provisions of the Code which preclude the appellant from taking up the investigation. The fact that the said police officer prepared the FIR on the basis of the information received by him and registered the suspected crime does not disqualify him from taking up the investigation of the cognizable offence. A suo motu move on the part of the

police officer to investigate a cognizable offence impelled by the information received from some sources is not outside the purview of the provisions contained in sections 154 to 157 of the Code or any other provisions of the Code.

14.2. It has also been held by the Supreme Court in the said judgment that there is no principle or binding authority to hold that moment the competent police officer, on the basis of information received, makes out an FIR incorporating his name as the informant, he forfeits his right to investigate. If at all, such investigation could only be assailed on the ground of bias or real likelihood of bias on the part of the investigating officer. The question of bias would depend on the facts and circumstances of each case and it is not proper to lay down a broad and unqualified proposition, in the manner in which it has been done by the High Court, that whenever a police officer proceeds to investigate after registering the FIR

on his own, the investigation would necessarily be unfair or biased.

15. Applying the principles laid down by the Supreme Court in the above referred to judgment to the facts of instant case, it cannot be said that since P.W. 5, T.A. Barot received the information, thereafter carried out the raid, lodged the complaint and also started investigation, the investigation carried out by him is vitiated, as thereby he has not committed any illegality. Therefore, the contention raised by Mr. Hasmukh that the investigation conducted by P.W.5, T.A. Barot is vitiated, has no merit and substance and deserves to be repelled and accordingly it is repelled.

16. On overall reappraisal of the evidence on record, according to this court, so far as A-1 is concerned, there is ample and voluminous evidence against him of his having the machinery for counterfeiting currency notes and it has been

duly proved by the prosecution that not only he has such a machine but he also demonstrated the manner in which the process of counterfeiting currency note was performed at the time of the discovery of the said machine and other materials from his residence by drawing discovery panchnama at his instance. He had the machinery in his possession which was being used for counterfeiting currency notes and he was also trafficking in these currency notes by selling them to the people. Of course, the hawkers and public owning the pan galls who were alleged to have been sold these currency notes are not examined by the prosecution as the investigating agency could not lay its hands on any particular person. 906 notes were found from his possession at the time of discovery panchnama and these notes were apparently counterfeit notes and were made with the use of the express bond papers found to be 326 in numbers and the process of making was demonstrated by him in presence of the investigating officer and the panchas, the

mens rea is clearly established by the prosecution. It has also come in evidence that A-1 is possessing degree of engineering and he had also served at Dubai. The involvement of A-1 is duly proved by the prosecution and from the entire evidence discussed herein above, he is required to be held guilty of the offences under sections 489A, 489B, 489C and 489D IPC. The prosecution has discharged the burden that A-1 was conclusively in possession of the room where from the instrument for forging currency notes was recovered and the object of the accused of using such an instrument for the purpose of forging the counterfeited currency note is clearly established by other facts that have come on the record and discussed herein before. Therefore complicity of the A-1 for commission of offences under sections 489A, 489B, 489C and 489D IPC is proved.

17. So far as the alternative prayer of showing leniency upon A-1 by reducing sentence is

concerned, according to this court, the offence proved against the A-1 is an offence against the Nation which would affect the economy of the country and A-1 being a qualified engineer and since his involvement in such type of anti national activity is proved, according to us, no leniency can be shown upon him.

18. On close scrutiny of the evidence on record, according to us, the trial court has committed no illegality or irregularity in coming to the conclusion that the prosecution has established the charges against A-1. We find ourselves in complete agreement with the said finding, ultimate conclusion and resultant order of conviction and sentence passed by the trial court as according to us no other conclusion is possible except the one reached by the trial court in the facts and circumstances of the case.

19. In aforesaid view of the matter, there is no justifiable or valid reason to interfere with the

impugned judgment and order of conviction and sentence passed by the trial court against A-1. Therefore, the judgment and order convicting and sentencing A-1 for commission of the offences punishable under Sections 489A, 489B, 489C and 489D deserves to be confirmed.

20. In the wake up of the aforesaid, we are not inclined to interfere with the judgment and order passed by the trial court convicting and sentencing A-1 for commission of offences under sections 489A, 489B, 489C and 489D IPC and, therefore, the appeal field by A-1 being Criminal Appeal No.917 of 2002 deserves to be dismissed. So far as the Criminal Appeal No.889 of 2002 filed by A-2 is concerned, it stands abated as he has died during the pendency of the appeal.

21. For the foregoing reasons, Criminal Appeal No.917 of 2002 filed by A-1 fails and is dismissed. The judgment and order dated 27.9.2002 rendered in Sessions Case No. 296 of 1999 by the

learned Additional Sessions Judge, Court No.10, City Sessions Court, Ahmedabad, by which the appellant of Criminal Appeal No. 917 of 2002 (A-1) is convicted for commission of the offences under Sections 489A, 489B, 489C and 489D IPC and sentenced to suffer RI for ten years and fine of Rs.30,000/- and in default of payment of fine, RI for further period of two years for commission of the offence under Section 489A IPC, RI for seven years and fine of Rs.5,000/- and in default of payment of fine, SI for further period of one year for commission of the offence under Section 489B IPC, RI for five years and fine of Rs.5,000/- and in default of payment of fine, SI for further period of one year for commission of the offence under Section 489C IPC and RI for ten years and fine of Rs.10,000/- and in default of payment of fine, RI for further period of two years for commission of offence under section 489D IPC is confirmed and maintained.

22. So far as Criminal Appeal No.889 of 2002

filed by A-2, Kaushikbhai Shambhubhai Patel, is concerned, as observed in earlier paragraphs of this judgment, he has died on 7.4.2005, during the pendency of the appeal, and therefore, the appeal filed by him shall stand abated.

(A.M. Kapadia, J.)

(K.A. Puj, J.)

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(karan)